

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY MANGANIELLO,

Plaintiff,

CIVIL ACTION No.: 07 CV 3644

-VS-

THE CITY OF NEW YORK, et al.

Defendants,

-----X

**DECLARATION OF MICHAEL H. JOSEPH, ESQ.  
IN OPPOSITION TO DEFENDANTS' SUMMARY JUDGMENT MOTION**

Pursuant to 28 USC §1746, I hereby declare, under penalty of perjury under the laws of the United States of that the following is true and correct.

1. My name is Michael H. Joseph.
2. I am an attorney duly licensed to practice law in the State of New York, and before the United States District Court for the Southern District of New York.
3. I represent the plaintiff in the above captioned matter, as such I am fully familiar with the facts and circumstances of this case.
4. This is a civil rights action brought pursuant to 42 U.S.C. §1983 in which Plaintiff, a former parkchester security guard alleges that he was maliciously prosecuted for the murder of Albert Acosta, a fellow parkchester security guard.
5. I offer this declaration in opposition to defendants' motion for summary judgement.
6. On April 22, 2008, the grand jury testimony in the People of the State of New York against Anthony Manganiello under indictment number 2207-01 was unsealed by Judge Marcus of the Bronx Supreme Court.
7. Defendant Alex Perez has failed to appear for a deposition and there is a motion to strike her answer pending before the Court.

8. For the reasons more fully stated in the annexed Memorandum of Law, defendants' motion for summary judgment should be denied in its entirety.
9. I attach the following documents, which form the basis of Plaintiff's Rule 56.1 statement and the arguments made in the Memorandum of Law:
  - The cited portions of Plaintiff's deposition taken in the instant matter, dated December 21, 2007 is attached as Exhibit 1.
  - The cited portions of the deposition of Mario Manganiello in the matter of Mario Manganiello versus The City of New York, et. al., dated November 9, 2004 are attached as Exhibit 2.
  - The cited portions of the deposition of Luis Agostini in the instant matter, dated December 20, 2007 are attached as Exhibit 3.
  - The Decision of the Honorable Patricia Ann Williams, J.S.C., in the matter the People of the State of New York against Anthony Manganiello under indictment number 2207-01, dated July 23, 2001 is attached as Exhibit 4.
  - The cited portions of a Book Entitled Notorious Cop, written by Defendant Derrick Parker is attached as Exhibit 5.
  - The cited portions of the deposition of Derrick Parker in the instant matter, dated January 30, 2008 are attached as Exhibit 6.
  - The cited portions of the trial transcript from the People of the State of New York against Anthony Manganiello under indictment number 2207-01, before the Honorable Martin Marcus, commencing on June 28, 2004 is attached as Exhibit 7.
  - A DD5 prepared by defendant Agostini and Statement of Michael Booth, dated March 1, 2001 are attached as Exhibit 8.

- A note dated 2-13-00, also marked as deposition exhibit 16 from the deposition of December 20, 2007, which is a note found in Plaintiff's locker is attached as Exhibit 9.
- A DD5 prepared by defendant Agostini dated February 27, 2001, which was also marked as deposition exhibit 21 from the deposition of December 20, 2007 is attached as Exhibit 10.
- The Declaration of Sal Miro dated March 1, 2008 is attached as Exhibit 11.
- A DD5 prepared by defendant Agostini dated February 27, 2001 is attached as Exhibit 12.
- A DD5 prepared by defendant Agostini dated February 12, 2001 is attached as Exhibit 13.
- A DD5 prepared by Officer Palacios dated February 16, 2001 is attached as Exhibit 14.
- A DD5 prepared by defendant Abate, dated February 12, 2001, which is also marked as deposition exhibit 17 from the deposition December 20, 2007 is attached as Exhibit 15.
- A DD5 prepared by defendant Agostini dated February 15, 2001, which is also marked as deposition exhibit 22 from the deposition December 20, 2007 is attached as Exhibit 16.
- A DD5 prepared by defendant Agostini dated April 5, 2001 which is also marked as deposition exhibit 23 from the deposition December 20, 2007 is attached as Exhibit 17.
- A DD5 prepared by defendant Agostini dated February 15, 2001, which is also marked as deposition exhibit 9 from a deposition dated December 19, 2007 is attached as Exhibit 18.
- A DD5 prepared by defendant Agostini dated April 5, 2001 is attached as Exhibit 19.
- A DD5 prepared by defendant Agostini dated March 1, 2001, which is also bates

stamped 862 is attached as Exhibit 20.

- A DD5 prepared by defendant Martinez dated February 12, 2001, which is also marked as deposition exhibit 6, from a deposition dated December 19, 2007 is attached as Exhibit 21.

- A DD5 prepared by defendant Agostini dated March 1, 2001, which is also bates stamped 848 is attached as Exhibit 22.

- The cited portions of the deposition of Harry Scott, dated December 19, 2007 are attached as Exhibit 23.

- The cited portions of the deposition of John McGovern dated February 7, 2008 are attached as Exhibit 24.

- The cited portions of the deposition of A.D.A. Christine Scaccia, dated May 2, 2008 are attached as Exhibit 25.

- Crime Scene Record from February 12, 2001, which was marked as deposition exhibit 5 at the deposition of A.D.A. Christine Scaccia, dated May 2, 2008 is attached as Exhibit 26.

- The Indictment of Terrance Alston, which was marked as deposition exhibit 30 at the deposition dated January 30, 2008 is attached as Exhibit 27.

- The Grand Jury Minutes of the Investigation into the Death Of Albert Acosta marked as Exhibit 1 at the deposition of A.D.A. Christine Scaccia, dated May 2, 2008 is attached as Exhibit 28.

- The cited portions of the deposition of Shawn Abate dated April 18, 2008 are attached as Exhibit 29.

- The cited portions of the deposition of defendant Martinez, dated December 19, 2007,

are attached as Exhibit 30.

- The cited portions of the deposition of defendant McCarthy dated February 7, 2008 are attached as Exhibit 31.

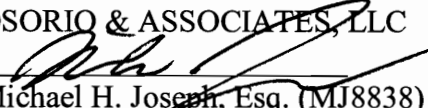
- The affidavit of Mario Manganiello dated May 9, 2008 is attached as Exhibit 32.

- The Affidavit of Anthony Manganiello dated May 9, 2008 is attached as Exhibit 33.

- The cited portions of the hearing testimony dated June 21, 2004 are attached as Exhibit 34.

- The affirmation of A.D.A. Mary Dandrea, which was marked as deposition exhibit 2, dated May 2, 2008.

Respectfully submitted,

BY:   
OSORIO & ASSOCIATES, LLC  
Michael H. Joseph, Esq. (MJ8838)  
184 Martine Avenue  
White Plains, New York 10601  
(914) 761-3168